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DEFENDANT RASH CURTIS & ASSOCIATES

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10 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11 IGNACIO PEREZ, on Behalf of Themselves and  
12 all Others Similarly Situated,

13 Plaintiffs,

14 v.

15 RASH CURTIS & ASSOCIATES,

16 Defendant.

Case No.: 4:16-cv-03396-YGR JSC

**DEFENDANT'S RESPONSE TO  
PLAINTIFFS' OBJECTIONS TO  
DEFENDANT'S POWERPOINT SLIDES 10,  
14, 15, 17, 18, AND 19**

DATE: May 6, 2019

TIME: 8:00 a.m.

DEPT: 1, 4<sup>th</sup> Floor

18 Defendant responds to Plaintiffs' objections to Defendant's Power Point slides 10, 14, 15, 17, 18,  
19 and 19 as follows:

20 As to slide 10: As to the video excerpts from Mr. Kizer's deposition, these were timely submitted  
21 to the court jointly on March 4, 2019. Defendant did list videotaped deposition excerpts from Mr. Kizer's  
22 April 13, 2017 deposition in rebuttal to Plaintiffs' audio-visual designation of his testimony. These were  
23 exchanged timely pursuant to the parties' agreement on February 22, 2019 at 5:41 p.m. That said, Mr.  
24 Kizer's deposition contains evidence (testimony) separate and apart from the audio-visual designations,  
25 and the use of clips in, and in rebuttal to, Mr. Kizer's deposition. The testimony on slide 10 is such  
26 evidence.

27 In any event, the fact that telephone numbers in phone fields 5 through 10 are obtained from a  
28 "variety of sources" is undisputed and will be confirmed by Mr. Kizer on the stand and other witnesses.

Defendant would be willing to remove any reference to Mr. Kizer and, instead, simply have a slide that says “phone numbers placed in phone fields 5 through 10 came from a variety of sources. . .”

**As to slides 14, 15, 18, 18 and 19:** Plaintiff objects to these slides on the basis they relate to willfulness/good faith, which will be the subject of the treble damages phase of the trial.

The evidence is actually being given in order to provide the context of the facts here, and how and why Rash Curtis was calling this number. Moreover, the jury is being told that Mr. Perez is the class representative of the four certified classes. Again, as discussed at length at the April 29 conference, whether the numbers were skip traced or not are the key issues of this trial. Class counsel are attempting to take these other issues out of play – but do so, in defendant’s view, would be error and prejudicial to its defense. Contrary to class counsel’s argument on skip tracing, there was no merit findings on skip tracing in the Court Rule 23.

Indeed, the Court relied upon Mr. Snider and Mr. Kizer's testimony that, *prima facie*, the numbers were obtained by skip tracing. (ECF 81, class certification order, September 6, 2017, p. 5:25, and pp. 10:17-11:6.)

Dated: May 3, 2019

ELLIS LAW GROUP LLP

By /s/ Mark E. Ellis  
Mark E. Ellis  
Attorney for  
DEFENDANT RASH CURTIS & ASSOCIATES